

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 WACO DIVISION

4 NEONODE SMARTPHONE, LLC) Docket No. WA 20-CA-505 ADA
5)
6 vs.) Waco, Texas
7)
8 APPLE, INC.) October 23, 2020

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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF TEXAS
12 WACO DIVISION

13 NEONODE SMARTPHONE, LLC) Docket No. WA 20-CA-507 ADA
14)
15 vs.) Waco, Texas
16)
17 SAMSUNG ELECTRONICS CO.,)
18 LTD., SAMSUNG ELECTRONICS)
19 AMERICA, INC.) October 23, 2020

20 TRANSCRIPT OF TELEPHONIC CONFERENCE
21 BEFORE THE HONORABLE ALAN D. ALBRIGHT

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25 Proceedings reported by computerized stenography,
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13:29:54 1 THE COURT: Good afternoon. It's Alan Albright.

13:30:00 2 Ms. Miles, would you call the case, please.

13:30:02 3 THE CLERK: Sure.

13:30:03 4 Telephonic scheduling conference in Civil Action

13:30:05 5 6:20-CV-505, styled, Neonode Smartphone, LLC vs. Apple,

13:30:10 6 Incorporated; and Case No. 6:20-CV-507, styled, Neonode

13:30:17 7 Smartphone, LLC vs. Samsung Electronics Company, Limited

13:30:20 8 and Samsung Electronics America, Incorporated.

13:30:25 9 THE COURT: Welcome, everyone.

13:30:26 10 If I could hear announcements from counsel,

13:30:27 11 please, starting with the plaintiff.

13:30:31 12 MR. CHERRY: Your Honor, this is Craig Cherry

13:30:33 13 with Haley & Olson on behalf of plaintiff, and Philip

13:30:35 14 Graves of the Hagens Berman law firm. And Mr. Graves will

13:30:39 15 be speaking on behalf on all points this afternoon, your

13:30:43 16 Honor.

13:30:43 17 THE COURT: Welcome. Thank you.

13:30:49 18 MR. GRAVES: Good afternoon, your Honor.

13:30:50 19 This is Philip Graves on behalf of plaintiffs.

13:30:53 20 THE COURT: And for defendant?

13:30:58 21 MS. CHEN: Good afternoon, your Honor --

13:30:59 22 MR. GUARAGNA: John Guaragna --

13:31:02 23 MS. CHEN: Hi, John.

13:31:03 24 This is Betty Chen of Fish & Richardson on behalf

13:31:07 25 of Apple.

13:31:08 1 THE COURT: Okay. And are there any issues we
13:31:10 2 need to take up?

13:31:13 3 MR. GUARAGNA: Your Honor, John Guaragna, just in
13:31:15 4 case I was cut off there, for Samsung Defendants.

13:31:18 5 THE COURT: Okay.

13:31:23 6 MR. GUARAGNA: At least from the defendants, your
13:31:25 7 Honor, we do have a couple of issues we'd like to take up
13:31:27 8 with respect to some pre-Markman items.

13:31:30 9 THE COURT: Okay.

13:31:33 10 MR. GUARAGNA: And speaking for Samsung, your
13:31:35 11 Honor, there are a couple of areas of third-party
13:31:40 12 discovery that we'd like leave to commence prior to the
13:31:44 13 Markman hearing. And I'm going to address one of those
13:31:47 14 issues, and I think Ms. Chen's going to address another
13:31:49 15 one.

13:31:50 16 With respect to the first issue, your Honor, we
13:31:53 17 believe that there are material prior art references
13:32:00 18 located with Sony, and we would like leave to commence
13:32:04 19 that third-party discovery of Sony to identify and
13:32:10 20 hopefully obtain the evidence with respect to those
13:32:14 21 third-party products that we think are going to be
13:32:18 22 important pieces of prior art in this case. We'd like to
13:32:20 23 commence that discovery as soon as possible.

13:32:24 24 We're hopeful but, unfortunately, we think there
13:32:26 25 may be a need to seek some of the discovery from Sony

1 overseas. And as your Honor obviously has experience,
2 that can take some time and will take likely even longer
3 during the pandemic. So with your Honor's permission,
4 we'd like to commence that discovery of Sony. Hopefully
5 we won't need to go through the Hague and go overseas, but
6 it looks like that is probably the case; but we'll avoid
7 it if we can.

8 But, in essence, we'd just like to get those
9 documents, no deposition. Just simply documents and get
10 that perhaps started now so we'll have it because it will
11 matter in the litigation.

12 THE COURT: Yeah. Let me tell you what I'm
13 trying -- and, Mr. Guaragna, as part of my committee, this
14 is an issue I think we're going to try and address on a
15 more permanent basis because it's coming up a good bit,
16 especially worse with the COVID situation and the
17 inability to travel.

18 So I am absolutely fine with you commencing
19 anything that is going to make the case go more smoothly.
20 If you are subpoenaing things for -- I'm not sure exactly
21 what format you're using to try and obtain what it is
22 you're trying to obtain from Sony, the only thing I would
23 suggest that you do is, make sure that the plaintiffs are
24 given a chance to -- if there's something they also need
25 from Sony or anyone else you're going to be sending a

1 request to, that they be able to cross-subpoena -- or if
2 they choose to. They can do whatever they want. But
3 we've got a couple of cases recently where one side was
4 concerned because the other side had subpoenaed some
5 things, but not everything.

6 So I'm actually fine for you to do that. Also,
7 just at a more macro level that may or may not apply to
8 what y'all are doing here, I think what I'm going to start
9 doing is -- and encouraging, actually. And, of course,
10 with lawyers of y'all's caliber, I probably don't need to
11 encourage, that you're probably going to do it without
12 that.

13 But, you know, anything that you can do in terms
14 of either documents, possible art, or inventors for sure
15 that are foreign, I'm going to allow those efforts to take
16 place immediately in terms of trying to get them arranged.
17 But I don't think I'm going to allow the discovery, for
18 example, the deposition to take place until, you know,
19 after the Markman.

20 But anything that a party wants to do to
21 accelerate the process of getting discovery done once the
22 Markman has taken place, I'm probably going to be okay
23 with.

24 MR. GUARAGNA: Thank you, your Honor.

25 I think to your point about collaboratively

1 approaching this, I think the parties have already agreed
2 to coordinate discovery in this case generally. And so,
3 we would certainly welcome an opportunity to make it as
4 easy as possible on Sony. And to the extent the plaintiff
5 has any issues it intends to seek doing that in
6 conjunction or doing that collaboratively, I think, is
7 certainly fine with us and makes a lot of sense. So we
8 appreciate that, your Honor.

9 We will -- we do intend to issue subpoenas.
10 Hopefully we can issue them just to the U.S. entity and
11 obtain any information we need. If we don't, we will move
12 forward with the overseas efforts. And we will hold off
13 on any depositions until after the Markman hearing, as
14 your Honor has indicated.

15 THE COURT: Now, of course, if -- and that -- and
16 by the way, that is sort of a generic concern. If you
17 were to find out, for some reason, that you needed to take
18 some -- actually take some kind of discovery because it
19 might not still exist, you know, if there's a person that
20 might no longer be with Sony, for example, or I guess
21 worse situation. But if there's any need to take
22 discovery because there's no -- it may not be available
23 after the Markman, just, you know, try and work that out
24 yourselves. But if you can't, certainly bring it to my
25 attention, and on a micro level, I'm happy to deal with

13:36:54 1 any issues you all have of whether or not to allow
13:36:57 2 discovery. But I will probably always err on the side of
13:37:01 3 making sure that the discovery is able to be taken.

13:37:04 4 But for the generic discovery that, Mr. Guaragna,
13:37:08 5 you're talking about, hopefully my plan works. If you
13:37:12 6 find, by the way, that there is some problem that's kind
13:37:17 7 of baked in that I'm just missing, please let me know
13:37:22 8 because, as I think everyone on the call knows, my goal is
13:37:26 9 to make this as user or lawyer-friendly as possible, and
13:37:32 10 if something I'm not allowing you to do or allowing you to
13:37:37 11 do, or we need to do it some other way that's more
13:37:39 12 efficient for you all, that is my ultimate goal.

13:37:43 13 So that was Mr. Guaragna. Does Ms. Chen need to
13:37:51 14 take up anything for her client?

13:37:53 15 MS. CHEN: Yes. Thank you, your Honor.

13:37:54 16 So I think here, we have the exact situation that
13:37:59 17 you're talking about where it is a unique situation, and
13:38:03 18 we would ask to take discovery and depositions before
13:38:07 19 Markman for certain foreign entities and the foreign
13:38:13 20 inventor.

13:38:13 21 And so, if I can give you some of the facts so
13:38:15 22 you understand the situation here, we have an entity
13:38:20 23 called Neonode, Inc., and that entity was original
13:38:25 24 assignee of the patents when they were issued. Neonode,
13:38:29 25 Inc. is located in Sweden, and it still has profit-sharing

1 rights with monetization of these patents. So Neonode has
2 at least six foreign subsidiaries and various joint
3 ventures. They range from places in Japan and South
4 Korea, Taiwan and Sweden.

5 And from looking at the public documents so, for
6 example, Neonode, Inc.'s 10-K, it looks like some of these
7 entities have rights to develop and license touchscreen
8 technologies. But to be honest, it's just a hodgepodge of
9 foreign entities, and we can't figure out who does what
10 from just looking at the public documents.

11 And so, what we had is this multiple layer of
12 entity -- foreign entity discovery. We have to first
13 conduct the discovery to figure out which entities are --
14 have which rights. And then, we have the second layer of
15 foreign discovery to obtain licensing assignment and
16 conception, valuation documents. And so, if we were to
17 start in April on the depositions, I just don't think we
18 have enough time within a seven-month period of discovery.

19 So for the entities, we would ask to take the
20 depositions and collect documents in advance. So
21 separately, we also have --

22 THE COURT: Let me --

23 MS. CHEN: -- the coinventor -- okay.

24 THE COURT: Let me hear if there's any objection
25 to that from the plaintiff.

13:40:02 1 MR. GRAVES: Yes. Thank you, your Honor.

13:40:03 2 This is Phil Graves.

13:40:05 3 We do object for several reasons. First, it's
13:40:09 4 not accurate to suggest that Neonode, Inc. is a foreign
13:40:15 5 entity. It's actually a Delaware corporation with a place
13:40:19 6 of business in San Jose, California. Second, you know,
13:40:25 7 the ownership -- it's a little unclear what bearing any
13:40:30 8 information concerning ownership or licensing would have
13:40:33 9 on any issues that need to be addressed prior to the
13:40:37 10 Markman.

13:40:38 11 We're fine with Apple commencing the process of
13:40:43 12 obtaining foreign discovery against, you know, whatever
13:40:45 13 foreign Neonode-affiliated entities they think may have
13:40:51 14 discoverable information. But we just don't think it's
13:40:54 15 efficient to conduct depositions and undertake, you know,
13:40:59 16 significant intensive discovery on these issues prior to
13:41:04 17 the Markman.

13:41:05 18 So we do object to this request, but, you know,
13:41:08 19 we're fine commencing the process as Samsung has
13:41:14 20 requested, right, but we just don't think it's efficient.
13:41:17 21 And we don't think it's going to yield anything useful for
13:41:21 22 Apple to be, you know, running all over the world, taking
13:41:23 23 depositions of a bunch of entities that really are
13:41:26 24 unlikely to have any material information or evidence in
13:41:31 25 any event.

13:41:31 1 THE COURT: Well, let me ask this. It sounds to
13:41:37 2 me like maybe the place to jump off on this is to allow
13:41:45 3 Apple to take a 30(b)(6) deposition of the United States
13:41:52 4 entity and we can -- and that person should be prepared to
13:41:57 5 tell us whether or not the information that they're
13:42:03 6 seeking with regard to licensing, and the other
13:42:05 7 assignments, and the other issues is available from
13:42:09 8 someone in the United States or whether or not everyone
13:42:13 9 will have to go to a foreign country to do that.

13:42:19 10 And then, it seems to me, we can make a more
13:42:23 11 informed decision at that point, the extent of dis --
13:42:26 12 whether or not we actually need to do discovery right now
13:42:29 13 or whether or not we just need to allow -- I need to allow
13:42:33 14 the defendant to lay the predicate, as it were, to get the
13:42:39 15 discovery done once the Markman takes place.

13:42:41 16 So, Ms. Chen, is there a downside to that I'm
13:42:47 17 missing?

13:42:48 18 MS. CHEN: I don't see a downside. That works
13:42:50 19 for us.

13:43:00 20 THE COURT: What is the relationship -- and I'm
13:43:02 21 not asking a legal relationship. Just if I were to allow
13:43:05 22 the deposition of that entity to take place, does the
13:43:07 23 plaintiff's counsel have the ability to coordinate that
13:43:12 24 kind of deposition or does -- or are they a pure third
13:43:17 25 party that -- what's the situation there?

13:43:19 1 MR. GRAVES: Yes, your Honor.

13:43:22 2 Neonode, Inc. is a third party. We are not
13:43:25 3 representing -- we are not counsel for Neonode, Inc.

13:43:29 4 THE COURT: Okay. Well, in that case, I'll allow
13:43:33 5 -- I will allow that discovery to take place. I assume
13:43:40 6 that they will cooperate with what I'm asking to be done;
13:43:45 7 if not and if Apple needs to come back to the Court for
13:43:49 8 some kind of order, I'm happy to do that, as well. Just
13:43:51 9 let me know.

13:43:52 10 So does that resolve that issue as far as
13:43:55 11 everyone's concerned?

13:43:58 12 MS. CHEN: From Apple's side, yes, your Honor.

13:44:03 13 MR. GRAVES: Yes, your Honor.

13:44:03 14 THE COURT: Okay. And, Ms. Chen, I interrupted
13:44:05 15 you earlier. What is the next issue?

13:44:09 16 MS. CHEN: Sure.

13:44:10 17 So it's similar in that the sole inventor of the
13:44:14 18 patent, someone named Magnus Goertz, is located in Sweden.

13:44:20 19 THE COURT: Okay.

13:44:21 20 MS. CHEN: And Neonode in this case has claimed a
13:44:25 21 priority date of May 25th, 2000. The first patent in the
13:44:29 22 case was filed on December 10th, 2002. And as far as
13:44:34 23 we've seen so far, Neonode hasn't produced any conception
13:44:38 24 or reduction to practice documents dating back to the May
13:44:42 25 25th, 2000 date. We've asked Neonode to confirm that it's

1 produced all conception, reduction to practice documents,
2 and it says it has, but Mr. Goertz might have more.

3 So here, you know, again, we feel like we're put
4 in a distinct disadvantage by not being able to conduct
5 discovery of Mr. Goertz before the Markman, and we'd ask
6 to be able to take a deposition of him and be able to
7 collect documents because we need to prepare invalidity
8 contentions and understand this purported priority date
9 that goes back to 2000.

10 THE COURT: Well, I'm not sure if the plaintiffs
11 have given you that date and they've acted in good faith,
12 in other words, if you have a lawyer on their side who is
13 -- who has represented to you what that date is, it seems
14 to me that you do your invalidity contentions based on
15 that, and if it turns out that in -- there wasn't a
16 good-faith basis for that to be made, then you can raise
17 that with me again.

18 Here's the only reason I say that is basically,
19 you know, I think you should get -- you're going to get
20 one opportunity to speak through deposition to the
21 inventor. And so, you know, if you -- if I were to allow
22 you to take the deposition of the inventor now, that would
23 be your -- you know, your one opportunity. And that may
24 be fine with you, and if it is -- and it sounds to me like
25 you'll probably be doing it by Zoom, then I'm open to

13:46:22 1 hearing that, as well.

13:46:24 2 But with the understanding that this would be the
13:46:30 3 only deposition that would be allowed of the inventor,
13:46:32 4 what would -- what would your preference be?

13:46:37 5 MS. CHEN: Well, with that understanding, that
13:46:38 6 what I would ask for is for the May 25th, 2000 date to be
13:46:48 7 -- to be stricken, quite honestly, because we don't have
13:46:50 8 any of the documents, any documents at all from the
13:46:52 9 plaintiff to support that date.

13:46:55 10 And they've said that they've provided us with
13:46:57 11 all documents, but I believe the document that goes back
13:47:00 12 the farthest is May 2001. And so, without any documents
13:47:05 13 that support that early date, then it's really hard for us
13:47:10 14 to be able to prepare our case and our defense with a date
13:47:13 15 that has no support.

13:47:16 16 THE COURT: Well, how about -- how about this.
13:47:21 17 My recollection was that -- my recollection is that it was
13:47:28 18 a legitimate 30(b)(6) topic to -- a legitimate 30(b)(6)
13:47:37 19 topic for someone to ask for that they -- the plaintiff
13:47:41 20 produce someone who would testify and bind the company
13:47:44 21 with respect to the date of conception. What if I allowed
13:47:48 22 you to have a deposition of a 30(b)(6) witness -- I can't
13:47:53 23 imagine it would take longer than an hour -- of the
13:47:56 24 plaintiff who you would then have a 30(b)(6)
13:48:00 25 representative who would be telling you what they believe

13:48:03 1 the date of conception to be, and we would go from there.

13:48:07 2 MS. CHEN: That works for us. Thank you, your
13:48:09 3 Honor.

13:48:09 4 MR. GRAVES: Your Honor, might I respond?

13:48:12 5 THE COURT: Yes, sir.

13:48:13 6 MR. GRAVES: So the -- so, first of all, the date
13:48:18 7 that we've provided in our disclosure of preliminary
13:48:22 8 infringement contentions and priority date does have a
13:48:25 9 good-faith basis. We have informed defense counsel that
13:48:31 10 the plaintiff here, Neonode Smartphone, has produced all
13:48:36 11 materials in its possession, custody or control that
13:48:40 12 evidence conception or reduction to practice. That has
13:48:45 13 been done.

13:48:45 14 But Neonode Smartphone does not control the
13:48:52 15 inventor, Mr. Goertz. So we've also informed defense
13:48:56 16 counsel, Mr. Goertz may have additional materials that
13:49:03 17 bear on conception or reduction to practice and obviously
13:49:06 18 has information along those lines. But again, since
13:49:11 19 Neonode Smartphone does not control Mr. Goertz and can't
13:49:16 20 necessarily obtain information from him, complete or
13:49:22 21 otherwise, that would enable it to respond to an inquiry
13:49:25 22 at a 30(b)(6) deposition, you know, it doesn't appear to
13:49:30 23 me that that would be, you know, the most effective way to
13:49:35 24 get at these issues. I mean, we're --

13:49:39 25 THE COURT: Well, don't you have -- you just said

13:49:43 1 you had provided to defendants a good-faith basis. And my
13:49:48 2 sense of what you would be saying, if I were in your
13:49:51 3 shoes, is that we've given them the best date we have, but
13:49:56 4 it could very well be that they get -- that when the
13:50:01 5 inventor talks, it could be an even earlier date because
13:50:04 6 he might be able to say -- to have additional information.

13:50:07 7 Is that what you're saying?

13:50:09 8 MR. GRAVES: That's certainly one aspect of what
13:50:13 9 I'm saying. Yes, your Honor.

13:50:15 10 THE COURT: Well, in that case, you know, it
13:50:21 11 seems to me that we probably ought to allow the defendant
13:50:25 12 to take a deposition, if they could get one arranged, with
13:50:28 13 the inventor to find out what he's going to say about the
13:50:33 14 invention date. Because if the only thing the plaintiff
13:50:36 15 is able to do is give a good-faith effort and I'm forcing
13:50:42 16 the defendants to give invalidity contentions, it seems to
13:50:48 17 me that they ought to have the benefit of that information
13:50:49 18 from the inventor.

13:50:51 19 And by the way, I understand what you're saying
13:50:53 20 about the 30(b)(6) and I wouldn't want someone -- I
13:50:57 21 wouldn't want to force you to have a 30(b)(6) from a
13:50:59 22 witness who, you know, really would feel uncomfortable
13:51:03 23 because he doesn't have any better information than what
13:51:06 24 y'all have.

13:51:06 25 So what is your proposal for a solution to this

13:51:10 1 before I tell you what mine is?

13:51:16 2 MR. GRAVES: Well, your Honor, so -- you know,
13:51:19 3 it's plaintiff's perspective that, you know, that
13:51:25 4 testimony regarding the conception and reduction to
13:51:27 5 practice doesn't really bear on the issues to be addressed
13:51:30 6 at claim construction. The claim construction should just
13:51:33 7 go forward, construing the claims based on the intrinsic
13:51:37 8 and whatever extrinsic evidence bears on those issues.

13:51:42 9 But with respect to, you know, the issue of a
13:51:45 10 30(b)(6) versus a declaration or a deposition, rather, of
13:51:48 11 Mr. Goertz, you know, it would be our position that a
13:51:51 12 30(b)(6) would be fundamentally unfair to the plaintiffs
13:51:57 13 due to constraints on the plaintiff's ability to obtain
13:52:01 14 complete information regarding the evidence --

13:52:04 15 THE COURT: Well, let me interrupt you because
13:52:06 16 maybe I wasn't clear.

13:52:07 17 I'm not going to make -- I get that. I'm not
13:52:10 18 going to make you do a 30(b)(6). So I'm trying to figure
13:52:12 19 out -- I'm trying to figure out what an alternate method
13:52:15 20 is because I do think that -- I do think that the
13:52:23 21 defendants ought to have a reliable date. And if you've
13:52:29 22 given them a date, but you can't provide them in good
13:52:34 23 faith -- I'm going to assume it is. But if you can't
13:52:36 24 provide to them any information -- unless you have and you
13:52:42 25 could tell me if you have -- that backs that date up, then

13:52:46 1 it seems to me that the person -- only person that really
13:52:50 2 has that information is the inventor, and we might need to
13:52:53 3 have him -- if he will make himself available, we might
13:52:57 4 need to have him deposed.

13:53:00 5 MR. GRAVES: And, your Honor, we or plaintiff
13:53:02 6 would not oppose, you know, efforts to obtain a deposition
13:53:08 7 of Mr. Goertz, of course, as long as, you know, all
13:53:12 8 parties are provided an opportunity to ask some questions
13:53:19 9 at that deposition.

13:53:20 10 THE COURT: Well, I think that's -- you know,
13:53:23 11 maybe I've been off the bench too long, but that's my
13:53:26 12 recollection of how these things work. So -- unless they
13:53:31 13 changed the rules and I missed it. So yes. If we're
13:53:35 14 going to go the deposition route, yes, everyone would get
13:53:40 15 to ask questions.

13:53:44 16 So it sounds to me like we have a suggestion from
13:53:48 17 the defendant and no opposition from the plaintiff. And
13:53:52 18 so, that being said, I'm not sure exactly, Ms. Chen, how
13:53:56 19 you go about arranging this deposition of the inventor,
13:54:01 20 but I will tell you that, as far as I'm concerned, you are
13:54:04 21 free to do so.

13:54:06 22 MS. CHEN: Thank you, your Honor.

13:54:07 23 One clarification. So with that, are we still
13:54:12 24 limited to just the one deposition of the inventor?

13:54:16 25 THE COURT: You know, number one, I'm not sure

13:54:18 1 that you'll be able to persuade this guy to give you one,
13:54:21 2 to begin with. And so, what I would suggest you do is
13:54:29 3 make this a full deposition of him, since he's -- unless
13:54:34 4 -- let me start over.

13:54:35 5 If you could get in agreement that you think you
13:54:39 6 could trust and rely on that he would make himself
13:54:43 7 available again -- I'm assuming this will be by Zoom. If
13:54:46 8 you can get an agreement from him that you're sanguine
13:54:50 9 with that he would appear again, then I would limit the
13:54:54 10 deposition to just the issues of -- you're worried about
13:55:00 11 with the date of conception.

13:55:03 12 If you have a legitimate concern that he might
13:55:08 13 not voluntarily appear again, then you are free to ask him
13:55:12 14 whatever questions you can ask, and then, we'll just deal
13:55:15 15 -- I will not say right now that I'm going to prohibit you
13:55:18 16 from taking the deposition. All I'm saying is, you know,
13:55:24 17 you may or may not -- you know, he may or may not agree to
13:55:26 18 do it. But I would allow in this situation another
13:55:28 19 deposition.

13:55:29 20 MS. CHEN: Thank you, your Honor.

13:55:33 21 THE COURT: Any other issues we need to take up?

13:55:37 22 MS. CHEN: Yes, your Honor. Sorry. If I could
13:55:38 23 indulge you with one more issue.

13:55:41 24 So --

13:55:43 25 THE COURT: Okay.

13:55:44 1 MS. CHEN: -- the issue is this. So these
13:55:46 2 patents in the suit are user interface patents. So, for
13:55:50 3 example, one of the patents, the 879 patent, Neonode has
13:55:58 4 accused glide or swipe typing, and the Apple iPhone, the
13:56:01 5 feature's called QuickPath. And what happens is when you
13:56:04 6 open up the keyboard, you can create words by moving your
13:56:07 7 finger across the keyboard without ever lifting your
13:56:11 8 finger up.

13:56:12 9 So that's a feature that Apple developed and
13:56:14 10 created. It's native to the phones when you buy them.
13:56:18 11 Neonode has accused and allegedly charted this. But what
13:56:22 12 Neonode has also done is it's accused ten apps that are
13:56:28 13 entirely created by third parties, and it hasn't charted a
13:56:32 14 single one of them.

13:56:33 15 So all it's done is, it's included one screen
13:56:35 16 shot for one app keyboard, and that's for one single
13:56:40 17 limitation; and then, it just concludes that the program
13:56:44 18 code for all third parties' swipe-typing apps cause the
13:56:48 19 accused devices -- and I'm reading here -- to function in
13:56:50 20 the same manner. And that's really just not enough for us
13:56:54 21 to understand what they're accusing here.

13:56:58 22 Before this call, I downloaded one of the
13:57:03 23 third-party apps that's called FancyKey, and it gives me
13:57:05 24 all these cute-colored keyboards with emojis, but they're
13:57:09 25 twelve keyboards and I can't tell how Neonode would accuse

13:57:13 1 this at all without any charts.

13:57:15 2 So in our meet-and-confer and in the papers that
13:57:17 3 we filed this morning, Neonode's saying that even if it
13:57:21 4 supplements, the charts would all be the exact same for
13:57:25 5 all the various apps. But all the various apps have
13:57:27 6 different keyboards, different user interfaces. And so,
13:57:30 7 if Neonode is saying that even if it supplements, it would
13:57:36 8 still be the same, then we would argue that the
13:57:39 9 supplementation would be futile, and we'd ask to strike
13:57:42 10 the contentions accusing the third-party apps.

13:57:46 11 THE COURT: Well, let me say -- let me address
13:57:49 12 that. It's rare -- it's rare that I ever, in advance, say
13:57:58 13 that I'm going to strike something that hasn't been seen
13:58:02 14 yet. So if the plaintiff has offered to provide you with
13:58:07 15 those infringement contentions and as officers of the
13:58:12 16 court, they are going to rely on them, they can send you
13:58:17 17 those infringement contentions.

13:58:19 18 If we get further down the road in the litigation
13:58:24 19 and, for some reason, you have -- you have -- if you
13:58:26 20 develop some reason to believe those infringement
13:58:29 21 contentions were not done in good faith, then we'll take
13:58:34 22 it up at that point.

13:58:37 23 The point here being this is one where I do agree
13:58:40 24 with the plaintiff, which is, these are, number one,
13:58:43 25 preliminary claim constructions and, number two, they

13:58:47 1 don't have anything really to do with the Markman process.
13:58:53 2 I mean, whether or not something infringes, I know the
13:58:58 3 lawyers like to have it so that they can cobble together
13:59:02 4 issues to be taken up at the Markman so they can come up
13:59:08 5 with possible claim constructions that might or might not
13:59:11 6 get them out of infringement. That's all fine, but that's
13:59:15 7 really not the reason we do Markmans.

13:59:18 8 But if the plaintiff has volunteered to give you
13:59:22 9 infringement contentions for the accused apps, I'm going
13:59:28 10 to let them, and then, we'll see what happens, whether or
13:59:33 11 not they're done in good faith or not. At this time, I'm
13:59:35 12 certainly going to assume that they will be.

13:59:37 13 Is there anything else?

13:59:42 14 MR. GUARAGNA: Not from Samsung, your Honor.

13:59:45 15 MS. CHEN: Not from Apple --

13:59:48 16 MR. GRAVES: Not from --

13:59:48 17 THE COURT: I just had a --

13:59:51 18 MR. GRAVES: Not from the plaintiff.

13:59:51 19 THE COURT: I heard someone give a very loud
13:59:54 20 sigh, so that must mean we're close to being done.

13:59:59 21 So it sounds like we're done. For purposes of
14:00:04 22 the people who I'm currently talking to, I hope you have a
14:00:07 23 wonderful weekend. Be safe out there. I'm going to stay
14:00:10 24 on this call because I think we have another call at 2:00.
14:00:13 25 But everyone who has been involved in this current hearing

14:00:17 1 is welcome to drop off. And I hope I get to see at least
14:00:21 2 some of you in person in the very near future. Take care.

14:00:25 3 MR. GRAVES: Thank you, Judge.

14:00:26 4 MS. CHEN: Thank you, your Honor.

14:00:27 5 MR. GUARAGNA: Thank you, your Honor.

14:00:27 6 (Proceedings concluded.)

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UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Certified Realtime Reporter,
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